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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/745,420	12/26/2000	Sergey N. Razumov	59036-012	9883

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Washington, DC 20005-3096

EXAMINER

FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/745,420

Applicant(s)

RAZUMOV, SERGEY N.

Examiner

Mark Fadok

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-5, 7-21, 23-29, 32, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 6, 22 and 33 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The examiner is receipt of applicant's response to office action mailed 12/31/2003, which was received by the office 2/5/2004. Acknowledgement is made to the amendment to claims 1,6,7,8,15,20-29 and 32, the cancellation of claims 30 and 31 and the addition of new claims 32-36 and the reply to interview summary received 2/12/2004. The applicant's response and arguments have been carefully reviewed, but were not found to be persuasive, therefore the following rejection modified as necessitated by amendment follows:

Examiner's Note

Examiner has cited particular columns and line numbers or figures in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 USC § 112

Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case the examiner is unable to ascertain the difference between a "purchase ordering facility" and a "retail facility", therefore the examiner considers one to be replaceable with the other. Appropriate correction is required.

Examiner Comment

The applicant's specification does not specifically define what a purchase ordering facility encompasses. For example, page 3, lines 6-10 states that the purchase ordering facility may contain samples of items offered for sale. The examiner has therefore concluded using the broadest reasonable interpretation of the term purchase order facility to be any location where products are being ordered e.g. the customer's home.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5,7-9,12,13,17-19,25 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by Tracy et al (5,979,757).

In regards to claim 1, Tracy discloses a retail system comprising
at least one purchase ordering facility for providing representations of items
offered for sale (col 2, lines 12-29),

at least one portable device movable by a customer for detecting indicia of said
representations to select the items to be included in a purchase order (FIG 9, Item 240,
barcode reader), and

a purchase ordering terminal provided in the purchase ordering facility for
enabling a customer to order products available for sale in the retail system including
the items that are not represented in the purchase ordering facility (a recitation of the
intended use of the claimed invention must result in a structural difference between the
claimed invention and the prior art in order to patentably distinguish the claimed
invention from the prior art. If the prior art structure is capable of performing the
intended use, then it meets the claim.

In a claim drawn to a process of making, the intended use must result in a
manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235
(CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963)).

Also it is noted by the examiner that the applicant has not specifically defined
what an "item" is, therefore an "item" as defined by Webster's dictionary "applies to each
thing specified separately in a list or in a group of things that might be listed or
enumerated". For further clarification that Tracy does in fact teach ordering listed items
that are not shown on the retailers shelf, the examiner directs the applicant's attention to

col 15, lines 17-45, were the user places an order for product that is not available (represented) at the facility. Alternatively the shopper is provided with a coupon (item) that is not represented in the ordering facility (col 12, lines 55-67, and col 6, lines 1-8, col 14, lines 5-20, col 14, lines 50-55)

The examiner further offers the applicant a real world example in a retail facility called JC Penny's. JC Penny's at their retail stores has long had a catalog department where a shopper could purchase products that were not available at the local store. The buyer places an order and the products are either delivered to the buyer or picked up later at the catalog department.

In regards to claim 2, Tracy teaches wherein the representation includes samples of the items (col 7, lines 60-67).

In regards to claim 3, Tracy teaches wherein said portable device is configured to read the indicia of the samples (FIG 5, Item 122).

In regards to claim 4, Tracy teaches wherein said portable device is configured to display total price of a purchase after reading the indicia of each sample (col 8, lines 10-18).

In regards to claim 5, Tracy teaches wherein said portable device is configured to enable the customer to edit the purchase order (col 4, lines 9-19).

In regards to claim 7, Tracy teaches wherein the purchase ordering terminal is configured to enable the customer to continue placing the product order after selecting the items using the portable device (col 6, lines 27-51).

In regards to claim 8, Tracy teaches wherein the purchase ordering terminal is configured to read purchase order information from the portable device (col 6, lines 44-51, additionally sales terminal 170 is connected to the central controller, which is connected to the portable terminal which downloads information to accomplish check out, thus there is a reading of purchase order information by the check out terminal through the controller. To further emphasize that the teachings of Tracy continues the purchasing process after a selection is made, the examiner directs the applicants attention to col 8, lines 10-20, where the portable terminal is used to add and delete items that are saved during the order process).

In regards to claim 9, Tracy teaches wherein the purchase ordering terminal is configured to present an electronic catalog including the products available for sale in the retail system (FIG 7A-D, to further emphasize that Tracy teaches an electronic catalog including the products available for sale in the retail system, the examiner directs the applicant's attention to Microsoft's Computer Dictionary definition of a

catalog that is "in a computer, a list containing specific information, such as name, length, type and location of files or of storage space. Clearly FIG 7D shows a display of information generated from a computer of a list of specific information about products for sale in the retail system (see also col 9, lines 5-15)).

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In regards to claim 12, Tracy teaches wherein the purchase ordering terminal is configured to electronically simulate an Internet site (col 2, lines 41-56, also Microsoft's Computer Dictionary defines simulation as "the limitation of a physical process or object by a program that causes a computer to respond mathematically to data and changing conditions as though it were the object itself. The examiner notes that the portable terminal receives and displays the web pages that are provided from the URLs of a remote location, therefore, simulating the remote site locally as if the person was at the website.

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In regards to claim 13, Tracy teaches at least one output device for producing an output representing the purchase order (FIG 4, POS terminal).

In regards to claim 17, Tracy teaches wherein the output representing the purchase order controls a passing device that allows the customer to leave the purchase ordering facility (FIG 9, Item 190, checkout device, and col 7, lines 10-15).

In regards to claim 18, Tracy teaches wherein said output device includes a printer for printing out the purchase order (FIG 6).

In regards to claim 19, Tracy teaches wherein a purchase ordered at said purchase ordering facility may be picked up at a retail facility remote from said purchase ordering facility (FIG 10, furthermore, the applicant's specification does not specifically define what a purchase ordering facility encompasses. For example, page 3, lines 6-10 states that the purchase ordering facility may contain samples of items offered for sale. The examiner has therefore concluded using the broadest reasonable interpretation of the term purchase order facility to be any location where products are being order e.g. the customer's home).

(restricted original presentation) In regards to claim 22, Tracy teaches wherein said purchase ordering terminal is provided with a purchase mode selection circuit for enabling the customer to select a desired purchase ordering mode defining electronic simulation performed by the purchase ordering terminal.

In regards to claim 25, Tracy teaches a retail system comprising
a plurality of purchase ordering facilities provided in retail facilities for enabling customers to place purchase orders, and

a plurality of purchase check-out facilities provided in the retail facilities for enabling the customers to receive ordered purchases,

a purchase ordering facility of said plurality of purchase ordering facilities includes a purchase ordering terminal for enabling a customer to place an order for a purchase,

said purchase ordering terminal being configured for displaying a list of the retail facilities to enable the customer to receive the ordered purchase at a purchase check-out facility of said plurality of purchase check-out facilities remote with respect to the purchase ordering facility where the purchase was ordered (see response to claims 1-25).

In regards to claim 26, Tracy teaches wherein the purchase ordering facility contains samples of items offered for sale and

said purchase ordering terminal is configured for enabling the customer to order products available for sale in the retail system including the items that are not represented in the purchase ordering facility (FIG 7C and response to claim 1).

In regards to claim 27, Tracy discloses a retail system controlled by a control system and comprising:

at least one storage facility for storing goods available for sale in the retail system, and

multiple retail facilities remote with respect to the storage facility,

a retail facility including a purchase ordering facility having at least one purchase ordering terminal for enabling a customer to order a purchase, and

a purchase obtaining point for enabling the customer to obtain the purchase ordered at the purchase ordering facility after a time period sufficient to deliver the ordered purchase from the storage facility to the purchase obtaining point (see response to claims 1-26).

In regards to claim 28, Tracy teaches wherein said retail facility contains samples of a limited number of items offered for sale (see response to claim 21).

In regards to claim 29, Tracy teaches wherein said at least one purchase ordering terminal is configured for enabling the customer to order products available for sale in the retail system, including the items that are not represented by the samples (FIG 7C and response to claim 1).

In regards to claim 32, Tracy discloses a method of selling goods comprising the steps of

storing goods available for sale in a storage facility,
presenting samples of the goods at a purchase ordering facility to enable a customer to order a purchase,

the purchase ordering-facility presenting samples of a limited number of items offered for sale, enabling the customer to obtain the ordered purchase at a purchase obtaining point after a time period sufficient to deliver the purchase from the storage facility to the purchase obtaining point, and

providing a purchase ordering terminal in the purchase ordering facility for enabling the customer to order products available for sale, including the items that are not represented by the samples (see response to claims 1-29 above).

In regards to claim 35, Tracy teaches wherein the purchase ordering terminal is configured to electronically simulate an Internet site (see response to claim 12).

In regards to claim 36, Tracy teaches wherein the purchase ordering facility comprises at least one output device for producing an output representing a purchase order to control a passing device that allows the customer to leave the purchase ordering facility (see response to claim 17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,10,11,14,15,16,20,22,23,24,33,34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy in view of Official Notice.

In regards to claim 6,22 and 33, Tracy teaches wherein the purchase ordering terminal is provided with a purchase mode selection circuit for enabling the customer to select a desired purchase ordering mode defining electronic simulation performed by the purchase ordering terminal. Tracy teaches a switching circuit (col 4, lines 50 and 51,), and purchasing both at the facility and online (col 14, lines 48-67, col 10, lines 10-35), but does not specifically mention a purchase mode selection circuit. It was old and well known at the time of the invention to offer a purchase mode selection circuit. It would have been obvious to a person having ordinary skill in the art to include in Tracy a purchase ordering mode circuit, because this added functionality would permit the user to shop both on the Internet and at the store using one terminal, thus saving money on equipment and providing convenience to the user.

In regards to claims 10,11,23,24,34 and 35, Tracy teaches providing, text video and audio over the internet (col 2, lines 30-40), but does not specifically mention that what is being projected on the device is a simulated store or game (the examiner makes note that in the specification, page 3, lines 11-16, of instant application's specification the applicant states "...the purchase ordering terminal may electronically simulate a store containing products available in the retail system, or a game, such as a soccer, hockey or football. Also, the purchase ordering terminal may simulate operations of an e-commerce Internet site"). It was old and well known in the art at the time of the invention to provide simulations over the Internet on various device displays. It would

have been obvious to person having ordinary skill in the art at the time of the invention to include in Tracy the simulations as taught by the instant claims, because graphical representations especially those which simulate, have been known to provide superior information to a user attempting to make a decision or be entertained.

In regards to claims 14 and 16, Tracy teaches using a portable device to read selected indicia, which causes the device to provide certain functionality (see summary), and an output device in communication with the input device (FIG 6). Tracy, however, does not specifically teach that the output device has readable indicia and that these readable indicia cause the input device to respond. It was old and well known in the art at the time of the invention to have input devices respond to readable indicia. Therefore, it would have been obvious to a person having ordinary skill in the art to include in Tracy the output device readable indicia as taught in claims 14 and 16, because this would provide information to the output device that the input device was present and provide instructions to the output device to begin processing. This in turn would provide for a checkout point to be unmanned and thus save the retail outlet money.

In regards to claim 15, Tracy teaches wherein the purchase order is automatically transferred to a central station, when the portable device reads the indicia of the output device (col 3, lines 38-48 see also response to claims 14 and 16).

In regards to claim 20, Tracy teaches selecting pickup or delivery (FIG 10), but does not specifically mention that there is displayed a plurality of available retail facilities to enable a customer to select a retail facility, to which the ordered purchase should be delivered. It was old and well known at the time of the invention to select a delivery point from which a customer can pick up products that were ordered (fulfillment centers for example). It would have been obvious to a person having ordinary skill in the art to include in Tracy offering a number of facilities from which a person could pick up ordered items, because this would allow the customer to pick a place that was closest to their home thus saving them time and provide for a satisfied customer.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tracy in view of Bluth et al (6,692,436).

In regards to claim 21, Tracy discloses a retail system having multiple purchase ordering facilities for placing purchase orders (col 3, lines 60-67), at least one of the retail facilities provides representation of a limited number of items offered for sale (col 6, lines 27-43, it should be noted that it would be impossible to have an infinite number of products available for scanning at a brick and mortar store, therefore the selection would inherently be limited), said at least one of the retail facilities is provided with at least one purchase ordering terminal for enabling the customer to order all products available in the retail system (FIG 6), including products not represented by the limited

number of items offered for sale. Tracy teaches including ordering of items that are not represented at the facility, but does not specifically mention that "products" not mentioned are made available for purchase on the purchase ordering terminal. Bluth teaches providing a kiosk in a shopping environment that allows a user to search for products that are not available for sale at the local site (see at least col 5, lines 5-55). It would have been obvious to a person having ordinary skill in the art at the time of the invention to include in Tracy the added functionality to search the internet for other localities for products that were not available, because then the user of the system of Tracy would not have to wait to bake that cake if the ingredients were not available at the store, thus improving customer relations and improving sales.

Response to Arguments

Applicant's arguments filed 1/28/2004 have been fully considered but they are not persuasive.

In response to applicant's argument concerning claim 1 that Tracy in regards to claim 1 does not suggest displaying an items that are not represented in the purchase ordering facility, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to

patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Also it is noted by the examiner that the applicant has not specifically defined what an "item" is, therefore an "item" as defined by Webster's dictionary "applies to each thing specified separately in a list or in a group of things that might be listed or enumerated". For further clarification that Tracy does in fact teach ordering listed items that are not shown on the retailers shelf, the examiner directs the applicant's attention to col 15, lines 17-45, where the user places an order for product that is not available (represented) at the facility. Alternatively the shopper is provided with a coupon (item) that is not represented in the ordering facility (col 12, lines 55-67, and col 6, lines 1-8, col 14, lines 5-20, col 14, lines 50-55)

The examiner further offers the applicant a real world example in a retail facility called JC Penny's. JC Penny's at their retail stores has long had a catalog department where a shopper could purchase products that were not available at the local store. The buyer places an order and the products are either delivered to the buyer or picked up later at the catalog department.

In regards to claim 7 and 8, applicant argues that Tracy does not disclose that the point of sale terminal 170 is a purchase ordering terminal enabling a customer to

continue placing the order. And that the purchase order terminal 170 reads purchase order information from the portable terminal. The examiner disagrees and notes that sales terminal 170 is connected to the central controller, which is connected to the portable terminal which downloads information to accomplish check out, thus there is a reading of purchase order information by the check out terminal through the controller. To further emphasize that the teachings of Tracy continues the purchasing process after a selection is made, the examiner directs the applicants attention to col 8, lines 10-20, where the portable terminal is used to add and delete items that are saved during the order process.

In regards to claim 9 applicant argues that Tracy does not suggest presenting an electronic catalog including the products available for sale in the retail system. The examiner disagrees and notes that the Microsoft's Computer dictionary states that a catalog is "in a computer, a list containing specific information, such as name, length, type and location of files or of storage space". Clearly FIG 7D shows a list generated from a computer of a list of specific information about product for sale in the retail system (see also col 9, lines 5-15).

Applicant also argues that in claim 9 that Tracy does not teach "including the items that are not represented in the purchase ordering facility. The examine notes that this limitation is not mentioned in claim 9.

In regards to claim 10 and the simulation of the store, the examiner directs the applicant to col 15, lines 1-5.

In regards to claim 12 applicant argues that Tracy does not teach electronically simulating an Internet site. Microsoft's computer dictionary defines simulation as "the limitation of a physical process or object by a program that causes a computer to respond mathematically to data and changing conditions as though it ere the object itself". The examiner disagrees with applicant's assertion and notes that the portable terminal receives and displays the web pages that are located from the provided URLs and therefore simulates the remote site locally as if the person was at the website.

In regards to claim 15 and applicant's argument that claim 15 is not taught by Tracy, the examiner directs the applicant's attention to claim 14 from which claim 15 is dependant.

In regards to claim 17, applicant argues that Tracy does not teach a passing device that allows the customer to leave the purchase ordering facility. To further clarify the passing device at the checkout point of item 190, see col 7, lines 10-15.

In regards to claim 19, applicant argues that Tracy does not teach a purchase ordered at a purchase ordering facility may be picked up at a retail facility remote from said purchase ordering facility. The applicant's specification does not specifically define

what a purchase ordering facility encompasses. For example, page 3, lines 6-10 states that the purchase ordering facility may contain samples of items offered for sale. The examiner has therefore concluded using the broadest reasonable interpretation of the term "purchase order facility" to be any location where products are being order e.g. the customer's home.

In regards to claim 20, and applicant's argument concerning displaying a plurality of retail sites, the examiner directs applicant to the discussion above in the office action.

In regards to applicant's arguments to claim 22, the addition of the features "purchase ordering mode" and "purchase ordering circuit" are considered new matter and must be removed from the claims in the next office action.

In regards to the arguments related to claims 23 and 24, see response to these amended claims above.

In response to applicant's argument that "As discussed above, Tracy does not disclose the subject matter of claims 25 and 26. The examiner concludes that the arguments sited above are sufficient, since no specific traverse is offered for claims 25 and 26. Therefore, the examiner directs the applicant's attention to the examiners responses as discussed above.

In response to applicant's argument that Tracy does not teach or suggest providing a purchase ordering terminal in the purchase ordering facility for enabling the customer to order products available for sale including the items that are not represented by the samples at the purchase ordering facility, the examiner considers that which is recites after the "for" statement to be intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Further it is clear that there is provided a purchase order terminal provided in a purchase order facility (see discussion above).

In regards to claims applicant's argument that Tracy does not teach an electronic store containing products available in a retail system. The examiner directs the applicant's attention to col 15, lines 1-5. The examiner further concurs with the applicant that Tracy does not teach a simulated game that is the reason why the examiner formed a 103 rejection of this feature, see rejection above.

Further, in regards to claims 10,11,14,16,23,24,34 and 35 a "traverse" is a denial of an opposing party's allegations of fact. The Examiner respectfully submits that applicants' arguments and comments do not appear to traverse what Examiner regards as knowledge that would have been generally available to one of ordinary skill in the art at the time the invention was made. Even if one were to interpret applicants' arguments and comments as constituting a traverse, applicants' arguments and comments do not appear to constitute an adequate traverse because applicant has not specifically pointed out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. 27 CFR 1.104(d)(2), MPEP 707.07(a). An adequate traverse must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying Examiner's notice of what is well known to one of ordinary skill in the art. *In re Boon*, 439 F.2d 724, 728, 169 USPQ 231, 234 (CCPA1971).

If applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

In regards to claims 14 and 16 and applicant's argument that the prior art does not teach or suggest "the output device provided with indicia readable by the portable device to automatically produce the output the output representing the purchase order

formed by the portable device as claims 14 and 16 require. The examiner respectfully disagrees and directs the applicant's attention to the previous rejection and that which is discussed above.

Further Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(703) 605-4252**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Vincent Millin** can be reached on **(703) 308-1065**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

(703) 872-9306 [Official communications; including
After Final communications labeled
"Box AF"]

(703) 746-7206 [Informal/Draft communications, labeled
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

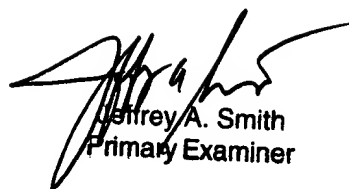
Application/Control Number: 09/745,420
Art Unit: 3625

Page 24

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal flourish extending to the right.

Mark Fadok

Patent Examiner

A handwritten signature in black ink, appearing to read 'Jeffrey A. Smith', with a long horizontal flourish extending to the right.

Jeffrey A. Smith
Primary Examiner